public officers, and those of ordinary servants or agents, make it difficult to transfer rules and definitions from one class to the other. Had the Crown in England been liable in tort there would no doubt have been a series of decisions applicable to servants of the Crown. It is quite certain that what Mr. Morten did was in his official capacity, as Collector, and this fundamental distinction might be held to be sufficient in most cases for the determination of the question whether the Crown is liable.

Appeal dismissed.

Solicitor for the Appellant—*Solicitor General, S.S.*

Solicitor for the Respondent—*S. C. Goho.*

From this decision of the Court of Appeal the Crown preferred an appeal to the Privy Council, which was dismissed. The Privy Council decision is reported in L.R. (1925) A.C. 555. The judgment of the Board is reproduced in the Appendix to *Braddell's* Law of the Straits Settlements, Vol. II. at pp. 441-447.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

August 4, 1932.

RE CHOP CHEONG JOO
EX PARTE HEAP THAI CHENG

[SINGAPORE BANKRUPTCY No. 361 of 1929]

Dividend in bankruptcy—method of attachment — garnishment — equitable execution—substituted proof.

A dividend in bankruptcy cannot be garnished but a party holding an unsatisfied judgment against a creditor in a bankruptcy may obtain an order in the suit appointing a receiver of the dividend by way of equitable execution and may thereafter apply by motion in the bankruptcy for an order authorising the Official Assignee to accept a proof by such applicant, in place of the original proof, and to pay all moneys payable in respect of such proof to the applicant until the amount specified in the Order is satisfied.

A Receiving Order in bankruptcy was made against Chop Cheong Joo and certain partners in the chop were adjudged bankrupt. One Lee Kee (m.w.) filed a proof for $80,000/- and the Official Assignee admitted the proof for part thereof. A dividend was declared but payment to Lee Quee Kee and certain other creditors was delayed.

In Suit No. 1083 of 1931, Stanton Nelson & Co., Ltd., recovered judgment against Lee Quee Kee for $30,000/- and costs.

They then applied to the Court by motion for an Order that they might be substituted for Lee Quee Kee as a creditor proving in the bankruptcy.

Walters for the applicants.

E. N. Taylor, Assistant Official Assignee.

Cur. Ad. Vult.

TERRELL, J.—This is a motion on behalf of Messrs. Stanton Nelson & Company, Limited, creditors, for an order that they may be substituted for the creditor Lee Quee Kee who has proved in this bankruptcy and that all benefit arising to Lee Quee Kee by reason of such proof should be given up to an amount of $30,000/- to the applicants in addition to their own proof already filed.

It appears from the affidavit of Eric Gregory Jones filed in support of the application that the applicants had obtained judgment in Suit No. 1083 of 1931, against Lee Quee Kee for the sum of $55,036/- and costs to be taxed. Lee Quee Kee had lodged proof in the bankruptcy for $80,000/-.

It is clear on the authorities that the Official Assignee can only pay creditors who prove (see Section 60 of the Bankruptcy Ordinance), and it follows from this that no form of execution or garnishment can issue against the Official Assignee in respect of a judgment obtained against a creditor even where the proof has been admitted, see *Prout* v. *Gregory*, 24 Q.B.D. page 281, and *In re Frost*, 1899, 2 Q.B. page 50. These decisions were followed by Deane, J., in Singapore Bankruptcy No. 565 of 1922 where he held that a dividend could not be garnished (see *Van Someren*, (Third Edition) Notes to Section 621 (2) of the Civil Procedure Code). On the other hand it has been decided that the assignee of a creditor's proof can apply to have his own proof substituted to that of the creditor, *In re Iliff*, 5 W. R. page 80, and the same rule has been applied in the case of an equitable assignment, *Re Hills, Ex parte Lang*, 107 L.T. page 95.

In the above two cases, however, the party who sought to prove had established some right to the creditor's dividend either by an actual legal assignment or through equitable assignment. It appears to me that the proper course is that indicated by Barrett-Lennard, J., in the Singapore Suit No. 312 of 1918, also referred to in Van Someren's Notes, and the applicants, Messrs. Stanton Nelson & Co., should apply for the Sheriff to be appointed receiver by way of equitable execution on their behalf of any dividend payable to Lee Quee Kee in the Bankruptcy. It is true that on the authorities cited this would not be an order binding the Official Assignee or upon which he would be required to act but the effect of the appointment of a receiver would be to give the applicants an interest in Lee Quee Kee's dividend which would be the equivalent of an equitable assignment. The production of the order, however, would satisfy the Official Assignee of the interest of the applicants in Lee Quee Kee's proof and he would then no doubt consent to a substitution of the applicant's proof.

The motion therefore will be adjourned in order that the applicants may make the necessary application in Suit No. 1083 of 1931, under Section 623 of the Civil Procedure Code.

Stanton Nelson & Co., Ltd., then applied to the Court by way of a Summons in the Suit No. 1083 of 1931, in which they were the plaintiffs and Lee Quee Kee the defendant, and by an order dated 22nd August, 1932, the Sheriff was appointed receiver by way of equitable execution of the benefit of the defendant's proof in the bankruptcy to the extent of $30,000/-. The Official Assignee was not a party to the Summons. The Sheriff then applied to the Official Assignee for payment of the dividend but this was refused on the grounds indicated in the judgment of Terrell, J., *supra*.

The applicants then reinstated their motion in the bankruptcy proceedings and an Order of which the following are the operative parts was made:—

"IT IS ORDERED that the applicants be substituted for the said Lee Quee Kee who has proved in this Bankruptcy for a sum of $80,000/- and that all moneys payable to the said Lee Quee Kee in respect of such proof shall be paid up to the extent of $30,000/- and the taxed costs hereinafter mentioned to the applicants AND IT IS FURTHER ORDERED that the Official Assignee be at liberty to place a proof by the applicants for $80,000/- on the file of this bankruptcy in place of the proof of the said Lee Quee Kee a creditor AND IT IS FURTHER ORDERED that the said Lee Quee Kee be entitled to the surplus (if any) after payment to the applicants of $30,000/- and the taxed costs hereinafter mentioned AND IT IS LASTLY ORDERED that the costs of this application be taxed as between party and party and paid by the said Lee Quee Kee."

Order accordingly.

Solicitors for the Applicants—*Allen & Gledhill.*

THE END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.